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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,327	04/21/2004	Jae-seong Shim	1293.1127C2	4238

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EXAMINER	
CERVETTI, DAVID GARCIA	

ART UNIT	PAPER NUMBER
2136	

MAIL DATE	DELIVERY MODE
08/11/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/828,327	SHIM, JAE-SEONG	
	Examiner	Art Unit	
	DAVID CERVETTI	2136	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/620,462.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's arguments filed June 11, 2008, have been fully considered.

2. Claims 1-2 are pending and have been examined.

Response to Amendment

3. The objection to claim 1 is withdrawn.

Allowable Subject Matter

4. The following is an examiner's statement of reasons for allowance:

- claims 1-2 would be allowable over the prior art;
- regarding independent claim 1, the prior art of record neither alone nor in combination teach "generating random data in a cycle of 32 KB" in combination with the other limitations recited in independent claims 1;
- claim 2 is allowed because of their dependence from independent claim 1.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Double Patenting

6. Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-15 of Copending application 10/828,326. Although the conflicting claims are not identical, they are not patentably distinct from each other because

- "a data scrambler having a random data generator for generating random data in a cycle of 32 KB in order to scramble data having structure of 2 KB for a sector or a data frame and 64 KB for an ECC block" **(claim 1, instant application)** is analogous to
- "a data scrambling method comprising: scrambling data having a structure of 2 KB for a sector or a data frame and 64 KB for an error correction code (ECC) block based on random data in a cycle of 32 KB" **(claim 14, '326 application)**.

Furthermore,

- "wherein the random data generator comprises: a 15-bit serial register r_0 through r_{14} for generating the random data by shifting left synchronized with a clock input for scrambling; and an exclusive OR gate for outputting an exclusive OR value exclusive-ORing output from a higher-most register r_{14} and output from a lower register r_{10} to a lower-most register r_0, wherein the scrambler includes an exclusive OR logic circuit which supplies a result of exclusive-ORing 1-byte input data D_0 through D_7 and each of the 8 outputs of lower registers r_0 through r_7 after left-shifting the 15-bit register r_0 through r_{14} 8 time" **(claim 2, instant application)** is analogous to
- "wherein the scrambling comprises: shifting left a 15-bit serial register r_0 through r_{14} for generating random data synchronously with a clock input for scrambling; outputting an exclusive OR value exclusive-ORing output

from the higher-most register r_{14} and output from the lower register r_{10} to the lower-most register r_0, outputting the result of exclusive-ORing 1-byte input data D_0 through D_7 and each of the 8 outputs of the lower registers r_0 through r_7 after left-shifting the 15 bit register r_0 through r_{14} 8 times" **(claim 15, '326 application)**.

7. This is a provisional obviousness-type double patenting rejection because the conflicting claims of the instant application have not in fact been patented.

8. Claims 14-15 of Copending application 10/828,326 contain every element of claims 1-2 of the instant application and thus anticipate the claims of the instant application. Claims 1-2 of the instant application therefore are not patently distinct from the copending application claims and as such are unpatentable for obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

9. "A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species with that genus). "ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

10. "Claim 12 and Claim 13 are generic to the species of invention covered by claim 3 of the patent. Thus, the generic invention is "anticipated" by the species of the patented invention. Cf., Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (holding that an earlier species disclosure in the prior art defeats any generic claim) 4. This court's predecessor has held that, without a terminal disclaimer, the species claims preclude issuance of the generic claim. In re Van Omum, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982); Schneller, 397 F.2d at 354. Accordingly, absent a terminal disclaimer, claims 12 and 13 were properly rejected under the doctrine of obviousness-type double patenting." (In re Goodman (CA FC) 29 USPQ2d 2010 (12/3/1993).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CERVETTI whose telephone number is (571)272-5861. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on (571)272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David García Cervetti/

Examiner, Art Unit 2136

/Nasser G Moazzami/

Supervisory Patent Examiner, Art Unit 2136